# REPORT

ON THE

# MEDICAL JURISPRUDENCE OF INSANITY.

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BY

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# REPORT ON MEDICAL JURISPRUDENCE OF INSANITY.

PRELIMINARY REMARKS.—The subject of insanity, in all its relations, is one of the most interesting that can engage the attention of the physician, the philanthropist, or the medical jurist; and one of the most brilliant achievements of the medical profession in modern times, is the reform which it has effected in the cure and treatment of that unfortunate class of our fellow-beings, who are afflicted with insanity; in rescuing them not merely from the neglect, but from the cruelty and abuse which they were formerly made to suffer. The name of Pinel, who was the first to remove the chains and shackles from the insane, should be ranked with that of Harvey and Jenner, prominent among the benefactors of mankind.

Thanks to the philanthropic exertions of Pinel, Esquirol, Haslam, Conolly, Prichard, Combe, and others in Europe; of Rush, Woodward, Brigham, Ray, McDonnel, Earle, and others in this country; insanity is no longer considered by the educated, a mysterious infliction of Divine Providence, but as a symptom of disease, demanding all the care, kindness, and attention of any other form of disease.

Reforms of every kind are slow in their progress; and although much has been accomplished as regards our knowledge of the causes, pathology and proper treatment of insanity, much as regards the care and well-being of this unfortunate class of patients, it is only necessary to examine the records of our courts, the conflicting opinions advanced by judicial authority, and the verdicts often given, to see that the legal relations of insanity, and the responsibility for supposed crime are as uncertain and unsettled as in the time of Blackstone or Lord Coke. In the general community, the idea of insanity has been formed from the few cases the individual may have seen of raving maniacs, or from reading the works of Shakspeare, Scott, and other writers of this class, which, however

correct as to certain forms of insanity, give no idea of the different phases of this protean malady. These erroneous views, unfortunately, are not confined to the ignorant and illiterate. If we look at the comments and observations often found in newspapers, and, I am sorry to add, sometimes in our medical journals—where a better knowledge would be expected—or at the testimony sometimes given by medical men in courts of justice, we must be satisfied that the general intelligence on the subject of insanity is far from keeping pace with the few who have devoted particular attention to the subject. Whilst some of our judges and jurists have manifested a degree of intelligence and judgment alike creditable to themselves and the courts over which they preside, it must be admitted, that, in a large proportion of cases, the verdict is dictated more by popular influence, or prejudice, or by the talent and ingenuity of counsel, than by the stern dictates of justice. Whilst, on the one hand, some persons who were really guilty have been acquitted, on the plea of insanity; on the other, popular clamor has condemned to an ignominious death many an innocent victim of disease, who was deserving of our pity and commiseration for his misfortune, and who should have found in the courts of justice, protection from popular excitement, instead of vindictive punishment. I have seen weeks spent in the trial of a poor demented being, who seemed totally unconscious of what was going on, and who scarcely had the intelligence of a dog. One witness testified that he believed he had the intelligence of an ordinary child of five years, but was not insane. On such testimony the prisoner was convicted of murder, but died in prison. A *post-mortem* examination revealed extensive disease of the brain. In another case, the prisoner, scarcely more intelligent, was convicted of murder, and hung. In a third case, the prisoner was convicted of murder, but the judge, instead of sentencing him, sent him to the asylum, where he still remains hopelessly insane.

In all civilized countries, from the earliest ages to the present day, persons laboring under insanity have been considered irresponsible agents. They were deprived of the control of their property, confined in their person, and if any civil act was performed it was invalid, and for criminal acts they were not held responsible. The theory of the English and American law is that punishment is not inflicted as an act of vengeance or retaliation, but to prevent its repetition by the individual, and to deter others by the example. Milder and more humane modes than that of punishment can be

adopted to prevent a repetition of the crime. No good could be produced by the punishment of an unfortunate victim of insanity, who is not himself a free agent. The theory is no doubt correct, and the principle inculcated is the dictate of humanity and justice. In extreme cases there can be no difficulty in its application; but such are not usually the subject of judicial investigation, it is in doubtful cases, whether the individual is insane or not.

Many attempts have been made to draw the line of demarcation between sanity and insanity. When we can define the line which separates light from darkness, or sickness from health, we may hope—and not till then—to point out the line which separates sanity and insanity. Much of the difficulty arises from the misapplication of the term insanity. The law says: "No act done in a state of insanity can be punished as an offence."[1] If this was carried out strictly, no person who was at all insane could be punished; but no court of justice ever has, or ever should, so carry out the law.

Many insane persons are justly held as responsible for their acts as those who are sane. This gives rise to an apparent diversity of opinion, not only between the medical witnesses and the court, but between different witnesses. The question to the medical witness is not as to the responsibility of the prisoner, but as to his sanity or insanity. One answers as he is bound to do according to the strict meaning of the term. Another, however, considers the question to be whether he is so insane as not to be responsible for his actions. It is believed that, where a man's judgment is impaired, his feelings perverted, or his perception blunted from disease or injury of the brain, he is insane, and that the true question is, whether he is so insane as to be responsible for his acts, and of this each case must be judged by itself. No single principle—as a knowledge of right or wrong, of the presence or absence of delusion; or of resistless uncontrollable impulse—can be adopted as applicable to all cases.

Much of the confusion and difficulty in the jurisprudence of insanity has arisen from the attempt to judge different forms of insanity by a single standard. Thus, in idiocy and imbecility, the true question for the jury to decide is the amount of capacity of the individual; in other words, does he know right from wrong? Take, on the other hand, a case of acute mania, with delusion; here every one can see that the question of a knowledge of right and wrong is

[1] Revised Statutes of New York.

entirely irrelevant. The true question for the jury is, whether the delusion actually exists, and whether it was the cause of the act in question. Again, take a case where the prisoner professes to have been impelled by an impulse which he could not control. The prisoner admits that it was wrong; that he knew it was wrong; there is no pretence of delusion; the question then for the jury to determine is, whether the circumstances are such as to satisfy the jury that he was not a free agent.

If we examine the record of the jurisprudence of insanity, and the judicial decisions under them, we shall find much diversity of opinion as to what amount of insanity should excuse from punishment. Some, with Justice Story, contend that there should be a total deprivation of sense and reason, so that he should not know his own name, who his parents were, or able to count five. It is hardly necessary to say, that no court or jury would try such a person at the present day. The generally received doctrine is that of a knowledge of right and wrong; and such was the answer of the fifteen judges of England. The former Supreme Court of New York (Justice Beardsley) decided that the true test was a knowledge of right and wrong as applied to the particular act under consideration. Lord Erskine, with much apparent plausibility, contended, in the case of Hatfield, that the presence or absence of delusion was the true test. An intelligent jury, however, usually judges from the particular circumstances of the case, without much regard to general tests; thus, McNaughton was acquitted in England, in direct violation of the principle laid down by the fifteen judges. In a recent trial for homicide, in this country, the court instructed the jury: "In order to justify a verdict of acquittal on this ground (insanity), you must find that the defendant, although conscious of the act he was about to perpetrate, and its consequences, yet, governed by an uncontrollable impulse, his will no longer in subjection to his reason, owing to the excited and continued impetuosity of his thoughts; the confused condition of mind, enfeebled by disease and goaded by a sense of grievous wrongs; that he was wrought up to a frenzy bordering on madness, which rendered him unable to control his actions or direct his movements."[1] The prisoner was acquitted.

Although the work of Dr. Rush on the Mind, published in 1812, which was far in advance of the time at which he wrote, contains

[1] Trial of Smith for the killing of Carter. Philadelphia, 1858.

many valuable suggestions on the jurisprudence of insanity, as also the tract of Haslam, republished in this country by Cooper in 1819, and the works on insanity by Pinel, Esquirol, Prichard, and Combe, yet we had no systematic work on the subject, either in England or this country, until the publication of the valuable work of Dr. Ray, on the *Medical Jurisprudence of Insanity*, first published in 1838. If this valuable work was in the hands of every medical witness and medical jurist, it would tend to dispel much of the mystery and confusion which surround the subject.

Since the publication of Dr. Ray, we have had a new edition, with additions, of the same work; several valuable contributions published in the *Journal of Insanity*, an able article, with copious notes by Prof. C. A. Lee, M. D., in Guy's *Medical Jurisprudence;* and a very elaborate article on the same subject, in the recent publication of Wharton and Stillé, on Medical Jurisprudence.

## PATHOLOGY OF INSANITY.

In our investigation of this subject, we are met at the threshold by the question of what is Insanity. Almost all modern writers agree that it is impossible to give a clear and intelligent description, in a concise definition. Dr. Andrew Combe defines it as "a prolonged departure from the accustomed mode of thinking or acting, of the individual, without any adequate cause." Although this conveys a clear idea of one of the important evidences of insanity, it only applies to one form, viz., mania, and gives no idea of the actual pathology. Dr. Bucknill says: "Insanity, therefore, may be defined as a condition of the mind in which a false action of conception or judgment, or defective power of the will, or an uncontrollable violence of the emotions and instincts have separately or conjointly been produced by disease."

We know nothing of the manner in which moral emotions or passions affect the physical organization, or the connection of mind and matter; and it is not probable that we ever shall. We know just as little why the eye alone is impressed with the rays of light, giving us vision, and the ear with aerial vibration, giving us the sense of sound. This, however, does not prevent our studying the laws of optics, or those of acoustics. The laws which govern the functions of the brain, as the instrument of mental manifestation, are just as certain as those of vision or hearing.

We know that the brain is subject to the same laws of nutrition, growth, and decay, as other parts of the system; that it requires a constant supply of healthy blood for its nourishment; that every thought or emotion of the mind, every passion and feeling, is attended with disintegration of the cerebral mass. It is exhausted by long-continued exertion, and refreshed by rest; strengthened by systematic and continued exercise, and weakened by want of exercise. It is not, then, difficult to see that a great variety of circumstances may derange the function of the brain. A deficient supply of blood; too much blood, producing congestion; blood of an impure or poisonous character, may all interfere with the proper function of the cerebrum. So a defective organization or development of the brain itself may destroy or impair its powers. As natural healthy function of brain is necessary for sanity, a departure from any of those conditions may produce insanity. When we know that a small portion of a poisonous substance introduced into the circulation, a slight injury of the head, a deficient quantity or an excess of blood sent to the brain, may any of them produce insanity, it would seem unnecessary to seek for causes in the immaterial agent of which we can know nothing, except as it is manifested through the material organ, or instrument, the brain.

We may investigate the conditions and laws which govern the function of the brain. Without attempting to solve the great mystery which surrounds the connection of mind and matter, Dr. Brigham says: "We consider insanity a chronic disease of the brain, producing either derangement of the intellectual faculties, or a prolonged change of the feelings, affections, and habits, of an individual. In all cases, it is a disease of the brain, though the disease of this organ may be secondary, and the consequence of primary disease of the stomach, liver, or some other part of the body; or it may arise from too great exertion of the mental powers or feelings; but still insanity never results, unless the brain itself becomes affected."[1] Webster defines insanity as "derangement of the intellect." This is too limited, as there may be derangement of the feelings, passions, and emotions, with little or no derangement of intellect; it is, however, considered synonymous with derangement. It would therefore be more appropriate to say that insanity was a symptom or evidence of deranged function of the brain.

[1] American Journal of Insanity, for Oct. 1844.

Most writers include idiocy and imbecility under the general head of insanity, as these arise from congenital deformity, or imperfect development of the brain. Perhaps they could not properly be said to be caused by disease. We may thus define insanity *as defective or deranged mental manifestations, arising from defective organization, imperfect development or diseased action of the whole, or part of the brain.* Dr. Brigham says: "The brain may be diseased, without causing insanity; for, although we say, and say truly, that the brain is the organ of the mind, yet certain portions of the brain are not concerned in the manifestations of mental powers, but have other duties to perform. Certain parts of the brain confer on us the power of voluntary motion; but these portions are distinct from those connected with the mental faculties. Hence, we sometimes see—though rarely, I admit—individuals paralytic, and unable to move from disease of the brain, whose minds are not at all, or but very little, disturbed." "Insanity, in most cases, is the consequence of very slight disease of a small part of the brain. If it were not so, the disease would soon terminate in death."[1]

The remote causes of insanity are the same as may produce disease in other organs; but, in addition, there are some which are peculiar to this affection, as violent mental shocks, or emotions. Dr. Brigham mentions the case of a patient in the asylum who became insane from the loss of a son. A similar case is now under charge of the writer. On one occasion, when attending church, the subject of this case saw a young man whom she fancied was her dead son, and insisted on going to him. When apprised by himself of her mistake, she still insisted it was her lost son.

In most cases of protracted insanity some traces of disease are found on a *post-mortem* examination. It is more than probable that the morbid appearance is the result, and not the cause of deranged function; and its absence is no argument against the idea of insanity being caused by deranged action.

It is evident, from the preceding remarks, that insanity is often but an effect of a slight injury or disease of a part of the brain; and in many cases only a few of the faculties of the mind are disordered. From this, we infer that the brain is not a single organ, but a congeries of organs, as maintained by Gall and his celebrated successors Spurzheim and Combe. Thus, each mental faculty may be disordered by disease of the brain, while others are not affected; a

[1] Journal of Insanity for Oct. 1844, p. 100.

fact every day observed in lunatic asylums, but which we know not how to explain if we believe the brain to be a single organ. We very rarely find the whole mind destroyed or disordered in insanity, except in cases of long continuance, or of unusual severity. A majority of patients in lunatic asylums have considerable mind left undisturbed, and some of them conduct themselves with propriety and converse rationally most of the time, and on all but a few subjects. "We wish to repeat that there is no faculty of the mind but may become deranged by disease of the brain. Disease of one part of this organ may cause the derangement of some of the intellectual faculties, while disease in another part may not disturb the intellect, but derange the moral powers or propensities. Thus, we see blows on the head and wounds of the brain sometimes destroy only one or two of the intellectual faculties, such as a memory of words, or the memory of places, and at other times to effect an entire change in the moral character."[1]

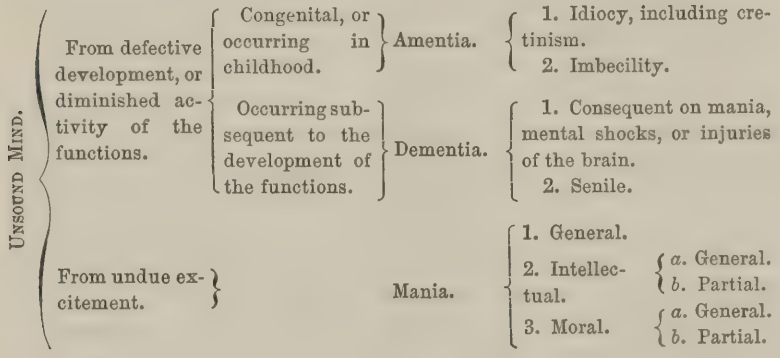
The analogy of the organs of sense, the result of pathology, and the phenomena of insanity and dreaming, all go to prove that the mind is not manifested through the agency of a single organ, but of many separate organs intimately connected, to a certain extent mutually dependent on each other, closely in contact, drawing their nourishment from the same fountain, consequently influenced and affected by the same causes, but still capable of acting to a certain extent, independent of each other, and of being separately injured or diseased.

## CLASSIFICATION OF INSANITY.

The term insanity, or derangement, has been preferred to that of unsound mind, used by some writers. The common law of England formerly recognized but two classes of insane, viz., Idiots and Lunatics. Blackstone says: "An idiot, or natural fool, is one that has no understanding from his nativity, and therefore is presumed as never likely to have any." "A lunatic, or non-compos, is one who has had understanding, but by disease, grief, or other accident, has lost the use of his reason." Cases, however, soon occurred which could not be properly embraced in either of these divisions; and the term *unsound mind* was adopted, and intended

[1] Journal of Insanity, by Doct. Brigham.

to embrace all the different forms of insanity. Medical jurists have most usually adopted the divisions of Esquirol, viz., Mania, Monomania, Dementia, and Idiocy; a great variety of classifications have been adopted by different writers. I have preferred that adopted by Dr. Guy, in his work on Medical Jurisprudence, and which resembles very nearly that of Ray. Though open to objection, it is believed to approach as nearly to the present condition of our knowledge as any we could adopt. It will be seen that the term *unsound mind* is such as embraces all the different forms of insanity:—




The principal objection to the above arrangement is that we occasionally meet with cases, especially those resulting from onanism or undue sexual intercourse, which do not seem properly to come under any of the above divisions.

It will be seen, by referring to the table, that the different forms of insanity are divided into two great divisions:—

*First.* Where there is a defect of capacity, or energy, or prostration of the mental powers.—Amentia: embracing idiocy, imbecility, and dementia.

*Second.* Mania: Intellectual and moral, divided into general and partial.

I. Amentia.—*Idiocy.* An idiot is defined as one "of non-sane memory *à nativitata*," as one who from his nativity, by a perpetual infirmity, is *non compos mentis;* or as one who has no understanding from his nativity. Dr. Ray says: "Idiocy is that condition of the mind in which the reflective, and a part or all the affective powers, are either entirely wanting, or are manifested in the slightest possible extent." In the worst cases of idiotism, there is usually more

or less malformation of the head, either very small or preternaturally large; often deformity in other parts of the body, feebleness of the muscular system, generally more or less defect of the senses: Whilst the intellectual and moral faculties are almost null, not from any perversions, but from defective organization, or defective development of the brain.

The individuals are often deaf and dumb; sight, and taste, and smell are imperfect. In the worst forms, life seems merely vegetative, and they manifest less of intelligence than the brute creation. Some idiots, however, manifest a certain degree of intelligence. They are able to recognize those who supply them with food; indicate their desires by certain cries and gestures; manifest a sense of pleasure and pain. In other cases, they have a certain degree of mechanical ingenuity. The fact that an individual has one or two faculties does not remove him from the class of idiots. On the other hand, we find individuals of great and highly cultivated talents, and yet a single faculty may be idiotic; but this does not make them idiots. Mr. George Combe tells us that this is the case with himself in regard to numbers. We often find it true in regard to music, and occasionally in regard to colors.

In regard to the legal relations of idiocy, in its more perfect forms, there can be no question. An idiot is not competent to perform any civil contract, and is not responsible for any crime he may commit. In the less perfect forms, it will depend on the degree of intelligence which they manifest; and this is a question which must be submitted to the jury.

*Imbecility.*—Imbecility is used to designate those forms of insanity or unsound mind which arise, not from an original malformation or defective organization, as in idiocy, but from some disease occurring in childhood and preventing the perfect development of the brain. Though of not much practical importance, yet the distinction is of value, inasmuch as in the latter case there has already been some manifestation of mind, and consequently the absence of sense and reason is seldom so perfect as in the former. Imbecility is defined by Dr. Ray as "an abnormal deficiency either in those faculties that acquaint us with the qualities and ordinary relation of things, or in those which furnish us with the moral motives that regulate our relations and conduct towards our fellow-men." Although imbecility is most frequently caused by disease occurring in childhood, many writers give it a more extended signification, as follows:—

1. Where original weakness or imbecility has lapsed into unsoundness of mind.

2. Imbecility supervening upon some disease of the brain, and manifesting itself particularly in a loss of memory.

3. Imbecility with confusion of ideas as of mind, and often attended with a loss of memory. It is either primary, or secondary; and in the former may be consequent upon severe disease of the brain, epilepsy, intemperance, sexual excesses, onanism, and senility. In the second form, it may arise from previous mania, or other forms of unsound mind, and always excludes the idea of responsibility.

4. Imbecility remaining after the patient has recovered from an attack of insanity, as in other cases, the organ affected remains more or less enfeebled after an attack of disease, so that in most, if not in all cases of recovery from insanity, a certain degree of imbecility remains for a time, but does not excuse the responsibility of the agent. In point of capacity, imbeciles differ as much as persons in ordinary life. Whilst some approach in all external characteristics, the class of idiots, others, without a careful examination, would pass for persons of ordinary or average capacity. Some will even manifest a high degree of capacity on some subjects, but total deficiency on others. Professor Lee, in his Notes to Guy's *Medical Jurisprudence*, says: "We know an individual now in the fiftieth year of his age, who from an attack of disease when an infant has never been able to read or write, or to make the simplest calculation in figures, or to know one letter from another, or to have any notions of cleanliness; and yet he possesses an excellent memory, and can repeat the contents of Webster's Spelling Book and the New Testament from beginning to end, from having heard them read in school, and can spell as well as most children of ten years old." There is in the asylum at Utica, a gentleman who has been there since its first organization, who had an attack of acute mania, whilst attending medical lectures in 1828; he now converses intelligently on most subjects, writes with considerable ability, and, being fond of declamation, speaks with much force and eloquence, and yet has so little foresight or precaution—as I was informed by a former superintendent—that he would wander all day without taking a thought where he was to sleep or get the next meal.

Every person conversant with the subject will recognize the truthfulness of the following description by Georget: "In hospitals

for the insane, there is always a certain number of imbeciles who do the coarser work of the house, or serve as domestics or assistants to the regular officers. They become sufficiently intelligent to perform their duties well, to sweep the courts, carry burdens, move machines, execute simple commissions, know the use of money, and procure various enjoyments; but they have no idea, or a very imperfect one, of society, laws, morality, courts, and trials; and though they may have some idea of property, they have no conception of the consequence of theft. They may have been taught to refrain from injuring others, but are ignorant of what would be done to them if guilty of incendiarism or murder. Indeed, it is well known how common theft is among imbeciles and idiots, and for very obvious reasons. Some of them have no conception of property, nor of the distinction of *meum* and *tuum*. Their conduct is actuated solely by the fear of punishment, when capable of experiencing this sentiment, and by their own desires. Others have some notions of property, but neither a sense of morality nor a fear of punishment furnishes motives sufficiently powerful to prevent them from stealing. The sentiment of cunning, too, may be very much developed while the other faculties are more or less deficient. Among the lower orders of society are many imbeciles a little more intelligent than these, and not considered as utterly devoid of understanding, who nevertheless have but vague and imperfect notions of social duties and of justice. They engage in occupations that require no great extent of intellect, and even in the simplest of the mechanic arts. If they do not pass among their acquaintances as imbeciles, they are at least regarded as singular beings with feeble understanding, and are teased and tormented in innumerable ways. Many of them, for want of some powerfully restraining motive, indulge in drinking and become lazy, drunken, and dissipated, and finally fall into the hands of justice in a greater number than is generally suspected. They steal adroitly, and hence are considered very intelligent; they recommence their offences the moment they are relieved from confinement, and are thus believed to be obstinately perverse; they are violent and passionate, and the slightest motive is sufficient to plunge them into deeds of incendiarism and murder. Those who have strong sexual propensities soon become guilty of outrages on female chastity. These beings of limited capacity furnish to the courts of justice, to prisons, and scaffolds, more subjects than is generally supposed."

We find in the community many persons who, though they do

not pass for imbeciles, and have a due sense of right and wrong, and sufficient moral sense to prevent them from violating the laws, have not sufficient capacity to acquire property or to retain it if they inherit it. They are the prey of sharpers and swindlers if they have property, and the hewers of wood and drawers of water to the more intelligent if they have not.

In regard to the legal relations of imbecility, no fixed rule can be laid down, if it is simple imbecility, unconnected with derangement. Whether the question is one of civil capacity or criminal responsibility, it is a question of capacity which must be submitted to the jury to decide. The witness, when called upon to testify in a case of imbecility, whether it has reference to his responsibility for crime, or the propriety of depriving him of the control of his property or restraining him of his liberty, must not judge from any single isolated act, but from the whole history of the individual, the opportunity he may have had for improvement, the moral influence exerted over him, and the capacity which he may have manifested for the transaction of business; and if it is a criminal act, whether there is any evidence of its being connected with delusion.

*Dementia.*—We should distinguish this form of insanity from the two preceding. We have seen that in idiocy it was congenital, in imbecility it occurred mostly in early life, and before the faculties were fully developed; whilst dementia only occurs after the full development of the faculties, and mostly in old age. Dementia differs from mania, on the other hand, from the circumstance that the latter is attended with excitement, and an exalted condition of the faculties, whilst the other is debility produced by exhaustion.

Dementia manifests itself under three different forms, which differ somewhat in their characteristics: 1. Dementia, resulting from some mental shock. 2. Dementia, from previous disease of the brain, as mania, delirium, inflammation of the brain or from delirium tremens. 3. Senile dementia, resulting from old age.

1. Dementia resulting from some mental shock. Many cases of this kind are related where, from some sudden fright, or unexpected noises, the mental process seems suddenly arrested and remains stationary. Thus, a case is related of a fisherman, who went in a boat to meet his bride; but the boat was upset, and she was lost. He became deranged from the shock, and would sit for days in the corner moving his arms as if rowing a boat. Sometimes, they will stand for many hours in the same position without moving, or speaking, with a vacant stare entirely void of intelligence; some-

times entirely silent, at others muttering to themselves some unintelligible jargon. In such cases, the insanity comes on suddenly, and from some known cause.

2. In the second form, the character of the dementia does not differ materially from the former, but the manner of approach is different. The natural termination of mania is either in recovery or dementia. Dr. Ray says that dementia cannot easily be mistaken for mania: this is true; but there is a certain period in the gradual change of one into the other, when it would be difficult to say to which class the case belongs. In a trial which excited much interest, the prisoner was clearly demented, and several intelligent medical witnesses so testified; but the prisoner, at the time the homicide was committed, manifested a degree of intelligence and cunning inconsistent with dementia. Although the cause of this was plain enough to the witnesses, it seemed incomprehensible to the jury. Before his death, which occurred some time after, he became perfectly demented, and a *post-mortem* examination revealed extensive disease of the brain. When it results from injury, or from inflammation, the mind seems arrested in its course. Dr. Beck mentions the case of a young clergyman who received an injury of the head; for a time his life was despaired of; but at length his health was restored, but his mind was destroyed. At the time of the injury, he was on the point of being married. Though he lived to an advanced age, he ever afterwards imagined himself on the point of marriage.

3. In senile dementia, the disease comes on gradually; the memory of recent events is first to be affected. The reasoning faculties frequently retain their vigor, after the memory is impaired. The moral and affective faculties often maintain their vigor, even when the intellect is lost. The intellectual faculties gradually fail, and the individual is reduced to a state of utter helplessness and dependence.

In cases of dementia, therefore, there may be every possible shade of mental affection between the excitement of mania, the glimmering of sense and reason, and the perfect extinction of all the mental faculties.

*Legal Relations of Dementia.*—It is seldom that dementia becomes a subject of judicial investigation, except as regards the validity of a will. It is not often that criminal acts are committed by the demented. In the more perfect form, they are totally incapable of any civil contract, and irresponsible for any criminal act. It is in

these cases where, from advancing age, the memory begins to fail, the intellect to become dull, that the question arises as to the capacity of the party to make a will. It is a principle well established that, where the instrument itself is consistent and reasonable; where it is in accordance with the previously expressed intention; and where there is no evidence that undue or improper influence had been used, and especially if the witnesses to the will testify that at the time of its execution he seemed to comprehend its import, it will usually be sustained, though it may be proved that the memory was somewhat impaired. On the other hand, if there is reason to suppose improper influences had been used, the courts are very apt to set it aside.

II. Mania.—Under this head are included all those forms of insanity which are characterized by undue excitement of the faculties. It differs, therefore, from the others by the symptoms which characterize it, and the legal tests by which it is known. Whilst, in idiocy, imbecility, and dementia, the former test of a knowledge of right and wrong might for the most part be properly applied, it would be entirely inapplicable when applied to mania, where the individual often manifests a degree of sagacity and cunning, of which he was hardly considered capable when sane.

We have seen that, according to the arrangement adopted, mania was divided into General, Intellectual, and Moral; and the two latter into the subdivisions General and Partial.

1. *General Mania.*—In this form of disease, both the intellect and the passions and feelings are thrown into a state of excitement and confusion. A rapid succession of unconnected ideas or emotions, acts of extravagance, a more or less complete forgetfulness of the previous condition, diminished sensibility to external impressions, loss or abolition of the faculty of judgment, characterize this form of insanity. Under whatever forms it may appear, unless it is the immediate effect of injuries, moral shocks, or acute disease, it is usually presented by what has been termed a period of incubation. The period of incubation varies from a few hours to months, and even years, and it is not a very rare occurrence that an individual, after having been for a long time on the very verge of madness, gradually recovers without any outburst. In most cases, where the attack is not sudden, there is a struggle on the part of the patient to conceal his emotions; he is perfectly conscious how they would be viewed by others, although they may themselves believe

in their reality. The patient feels that there is a change in his feelings, but tries to conceal it; he is unable to sleep at night; his appetite is impaired; he suffers from constipation; becomes thin and sallow. As these changes are gradually taking place, the whole character of the man is changed; the industrious, orderly, business man becomes idle, negligent, and careless; the fond husband and affectionate parent becomes cross, morose, and tyrannical. If he was before prudent and economical, he becomes careless and extravagant; not unfrequently enters into politics or religion with a zeal altogether foreign to his former character; but if, on the other hand, he was before religious, he often becomes very negligent of his religious duties, and sometimes profane. The great and important evidence of his insanity is not so much that his thoughts and actions differ from those of others, as from his former self. It is supposed that the conduct and character of an individual do not undergo a material change, without some adequate cause. If, then, such changes take place without any assignable cause, and are attended with the other indications of insanity, or deranged health, impaired appetite, and inability to sleep, there can be but little doubt the individual is on the brink of insanity, though there has been no decided outbreak of the disease. The period of incubation is very various; but, when the insanity is fully formed, the senses, the intellect, and the moral feelings and purposes are thrown into one complete state of chaos and confusion.

2. *Intellectual Mania.*—In some cases, insanity seems almost entirely confined to the intellect, without influencing the feelings. It more frequently occurs in those distinguished for their ability. A gentleman, who was for a long time an inmate of the New York State Asylum, was a striking illustration of this form. When young, he studied law, and entered upon the practice of his profession, with the reputation of talents and great promise. After he became insane, in his diary was found his arrangement of time, by which he devoted a certain number of hours to study, a limited time for meals and exercise, and but a short period to sleep. The peculiar feature of his insanity was that he boasted of what he had done, and what he meant to do; was very polite, and seldom troublesome, unless when he resented what he considered an insult to his dignity, or a want of due respect from inferiors. Articles written by him for the Journal, always carried with them the evidence of insanity, and yet they often abounded with the evidence of general intelligence, great shrewdness, and high and lofty senti-

ment. I could never discover that his high sense of honor his love of virtue, or his attachment to his friends was in the least affected. I had known him before his insanity, and wherever I met him, however much deranged he might be, he always expressed his pleasure and gratification at the meeting, and seldom failed to speak of incidents and circumstances which occurred before he became insane.

2. *Partial Intellectual Mania.*—This constitutes the form of insanity described by the older writers under the name of Melancholy, and for which Esquirol substituted that of Monomania. It was termed melancholy, from the supposition that it was attended by despondency and depression of spirits; but this is far from being always the case. The most simple form of this affection is where the patient labors under a fixed delusion as to one particular circumstance or event. It is beautifully illustrated in the character of the astronomer, in Dr. Johnson's inimitable tale of Rasselas. Sir George Mackenzie says: "I knew one who seemed a discreet person, and could converse most pertinently, until they spoke of the moon; but, upon hearing this mentioned, fell instantly a staring, and into great extravagancies, believing himself to be secretary to the moon." Lord Erskine, in his defence of Hadfield, mentions two memorable instances of this form of insanity, in one of which he was witness, and the other he received from Lord Mansfield. He says: "I examined for the greater part of a day, in this very place, an unfortunate gentleman who had indicted a most affectionate brother, together with the keeper of a madhouse at Hoxton, for having imprisoned him as a lunatic, whilst, according to his evidence, he was in his perfect senses. I was unfortunately not instructed in what his lunacy consisted. The day was wasted, and the prosecutor appeared to the judge and jury and a humane English audience as the victim of a most barbarous and wanton oppression, when Dr. Sims came into court. From Dr. S., I learned that the very man whom I had been upwards of an hour examining, believed himself to be the *Lord and Saviour of mankind.* I then affected to lament the indecency of my ignorant examination, when he expressed his forgiveness, and said, with the utmost gravity and emphasis, 'I am the Christ.' In the other case, a man by the name of Wood had indicted Dr. Monroe for keeping him a prisoner. He underwent a most severe examination, without exposing his complaint, when Dr. Battye requested me to ask him what had become of the princess, whom he corresponded with in cherry

juice. He answered that there was nothing at all in that, because having been (as every body knew) imprisoned in a high tower, and being debarred the use of ink, he had no other means of correspondence but by writing his letters in cherry juice, and throwing them into the river which surrounded the tower, where the princess received them in a boat. Of course there was no tower, no imprisonment, no writing in cherry juice, no river, no boat, but the whole an inveterate phantom of a morbid imagination. I immediately," continued Lord Mansfield, "directed Dr. Monroe to be acquitted. But this man, Wood, on his way to the madhouse, indicted Dr. Monroe over again for trespass and imprisonment in London. On the second trial, all the ingenuity of the bar, and all the authority of the court, could not make him say a single syllable upon the topic which had put an end to the indictment before." One of the most frequent cases of this form of insanity is where the patients imagine there is some living animal within them. With females, they often imagine and insist that they are pregnant. On one occasion, a man insisted he had mice in his abdomen; his physician gave him something, as he said, to destroy them; but the patient soon returned very much alarmed, and wanted to know if he had given him ratsbane.

3. *Moral Mania.*—As we have already seen, previous to the time of Pinel, insanity was considered almost, if not entirely, an affection of the intellect, or of the reasoning faculties; but, whilst connected with the Bicêtre, he found many maniacs who betrayed no lesion of the understanding, but were under the dominion of abstract and instinctive fury, as if the affective faculties alone had sustained injury. This he designated as "*mania sans delire.*" Since his time, the great importance of this distinction has been recognized by a large number of writers on insanity; though not generally recognized by the courts of justice, and apparently questioned by some recent writers on the subject. That the moral feelings, the affections and sentiments, the love of family and friends, the love of justice, and the feelings of veneration and of conscientiousness may be destroyed or perverted by the same means—*i. e.*, disease of the brain—as the intellectual or reasoning faculties, is established by too much evidence to admit of a question. It is, however, true that the same causes which produce moral insanity, are apt also to affect the intellect, and that in general mania, the first indication is a perversion of the moral faculties, and that moral insanity can hardly continue long without affecting the intellect.

At the same time, if we admit the term insanity, as applied to these perversions of the feelings, it is a very difficult question to determine how far it should excuse the commission of crime. Although the feelings, the inclinations, and propensities may have changed, yet so long as the individual is able to control his actions, and possesses sufficient intelligence to know the consequences of his actions, and is not laboring under any delusion, it is difficult to say how far he should be excused. The following is one of the most striking cases of moral insanity I have ever seen.

Some years since, the late Prof. James Webster called upon me, saying he had with him a gentleman whom he was requested to place in the asylum, but that he was wholly at a loss what to do. The gentleman, who was a resident of one of the western villages in New York, had left home without the knowledge of his family and friends. Some time after, they heard of him in one of the Atlantic cities. Dr. W. was requested to go for him, and leave him at the asylum at Utica. It appeared that, for some time before his leaving home, his friends and family had noticed a marked change in his conduct. From being an industrious and careful business man, he had become idle and careless in his affairs; from a kind and affectionate husband, and indulgent parent, he had become cross, tyrannical, and abusive in his family. These changes had given rise to a report that he might be insane—a report which he was particularly anxious to rebut. Dr. W. found him boarding at a fashionable and expensive hotel. He had introduced himself to the public authorities, had visited the different public institutions, and manifested a warm interest in the charitable institutions of the city. When the Dr. mentioned the object of his visit to one of the officers of the city, they begged that he would say nothing about it publicly, as no one had suspected him of being insane. In order to get him to leave, he requested the landlord to insist on payment for his board. Knowing that he had no money, by this means he got his consent to leave and travel with him, and, after visiting several other places, they came to Utica. My advice was that he should not place him in the asylum, but take him home, and if it became necessary, to tell him frankly why they placed him in confinement. At the same time, I proposed to the Dr. and the patient to visit the asylum, and went with them; the patient consulted Dr. Brigham, the superintendent, in regard to his health; mentioned the reports as to his insanity, and showed him several articles which he had written for different papers on a variety of subjects, for the

purpose of proving he could not be insane. In the course of conversation, I suggested that it was very difficult for a patient to judge in his own case. He replied that he knew that, and therefore went among strangers, where they had not heard the reports to his prejudice; and if they did not discover any insanity, he thought it pretty good evidence that he was not crazy. He was taken home, and not long after brought back to the asylum. Unfortunately, instead of telling him it was necessary, and, if he refused, compelling him to come, they represented that it was in vain for him to attempt to satisfy the community on the subject; but, if he would consent to go and board at the asylum a few weeks, and get a certificate from the superintendent and his assistants that he was not insane, it would satisfy his friends and the public. On these conditions he consented to go. When the few weeks were up, he wanted the certificates. Of course they could not be given. He then demanded to be released; this could not be granted, at which he was very indignant. Dr. Brigham, the superintendent, said he was the most troublesome patient he ever had in the asylum. Too rational and intelligent to place in close confinement, there was nothing that cunning and sagacity could devise that he did not resort to, to annoy the officers and attendants. On one occasion, he wished to see the managers privately. When brought before them, and they wished to know what complaints he had to make, he said it was not his business to make complaints, but it was their business —as managers of the institution—to know how it was controlled; that it was a very responsible office; and that he doubted very much whether they knew anything about what was going on. It was a regulation of the asylum that the chairs should not be taken from the parlors into the hall; this had been done several times, and the chairs quietly returned by the attendant. On one of his visits, the superintendent found him, with several other patients, on the floor. On inquiring what it meant, he said the attendant would not let him have a chair, though there were plenty of such in the hall. Every opportunity he could get he importuned his wife and family to take him out. At length his wife, worn out by his importunities, came to me to know what she had better do. I was aware that they would be very glad to get rid of him at the asylum, and my advice was to take him home, and if it became necessary to confine him, to take him to some other institution, to tell him why they did it, and not leave the impression that he was confined by the officers of the asylum.

*Partial Moral Mania.*—This consists in the exaltation or predominance of one passion or propensity over every other. The propensity thus affected, propels the individual, as it were, by a kind of irresistible impulse. Sometimes the individual seems to retain a full consciousness of the impropriety of the conduct, and even struggles to resist it, and in many instances patients have requested to be confined to prevent their committing some outrage.

Dr. Woodward, in one of his reports, mentions an interesting case of the kind. He was consulted by a young man, who stated that he had been compelled to quit his work, from fear that he should murder his own brother, who worked in the same shop. He had no enmity or dislike to his brother, but a strong impulse to kill him. He had struggled against it; but, fearful he might not be able to restrain himself, had quit the shop and his work.

Many mothers have begged to be confined, lest they should kill their children, although in some cases they retain a full sense of the impropriety and horror of the act. I am satisfied that in many it arises from a want of any due appreciation of the criminality of the act.

There are scarcely any of the stronger impulses of our nature which may not be excited into an undue activity. Writers on this subject have, however, omitted to notice an important distinction between cases resulting from an exalted and diseased condition of the brain, and those resulting from a natural defect or incapacity of appreciating the force of moral obligation; the one is properly a case of moral mania; the other of moral idiocy.

The following are some of the principal forms of moral mania:—

(1.) *Cleptomania, or Propensity to Theft.*—Dr. Rush has noticed this particular form of mania, under the title of derangement in the will. Many cases are on record of persons whose conduct was moral and irreproachable in every other respect, but who had a strong propensity to steal—one evidence that in many cases it is an attendant on imbecility. When it occurs as a consequence of disease, in a person in whom it did not previously exist, or in connection with other evidence of insanity, it should be considered as only one of the attendants of mania. Dr. Lee, in his Notes to Guy's *Medical Jurisprudence*, mentions the case of a physician who was several times arrested for pilfering, though in every other respect his conduct was moral and correct. The peculiarity of these cases is that it seems to arise from an irresistible impulse, and not from any ulterior object, as articles which can be of no use

to the person are as often stolen as the most useful or valuable. It is only in those cases where it is attended with a change in the habits and conduct of the person, that it can properly be considered *Partial Mania;* in others, it is more properly *Partial Imbecility.*

(2.) *Lying.*—Dr. Rush says there are many instances of persons of sound understanding, and some of uncommon talents, who are afflicted with this *lying* disease in the will. It differs from exculpative, fraudulent, and malicious lying, in not being influenced by any of the motives of any of them. "Every person who has much acquaintance with society, must have known individuals of this kind. I knew a physician who had considerable natural shrewdness, and acquired an extended reputation as a practitioner, who never manifested the least conception of any moral obligation in what he said. What seemed the most surprising was, that he would relate, with all the gravity of truth, the most preposterous falsehoods, when he knew that his hearers knew that he was lying." As in the former case, it is only while this propensity supervenes from disease, that it should be considered a case of partial moral mania.

(3.) *Pyromania, or a Morbid Propensity to Incendiarism.*—This form of partial moral mania is not of very uncommon occurrence. In many, perhaps most cases, it is only one of the forms in which insanity manifests itself, and there are persons to be found in almost every asylum who have been acquitted of incendiarism. In some cases, it is almost the sole indication, and seems the result of a morbid propensity, without any marked lesion of the intellect, or other moral faculties.

There was, for many years, a young man in the asylum at Utica, who had been acquitted on the ground of insanity. He was well educated, a fine musician, and in his conversation gave no evidence of insanity. As an evidence of this, he was for some time employed as teacher of the school in the asylum; and yet the circumstances were such as to leave little or no doubt it was the work of an insane person. When an alarm of fire was given, he quietly said he guessed it was the church, for he set it on fire, and that he had burned some other buildings which had been burned. The volunteered confession, the acknowledgment of having set other buildings on fire, the absence of all motive, and apparently of all sense of criminality, would tend to show that he was not a respon-

sible agent, and had no realizing sense of the crime he had committed.

(4.) *Suicidal Mania.*—It is certainly a singular circumstance that the propensity of self-destruction is so common an attendant on mania. No person who has been familiar with the insane, and knows how difficult it often is to prevent them from committing suicide, can doubt that a large proportion of the cases, now become so frequent, of self-destruction, results from insanity. The frequency with which this is effected or attempted, is indeed the strongest argument for the early removal of patients to a well conducted asylum, where the patient can be protected from himself. This is almost, if not quite impossible, when the patient remains in his own home. Whether the commission of suicide should of itself, in all cases, be considered an evidence of insanity or not, I shall not question. Where an individual deliberately takes his own life without there being anything in his situation and circumstances to account for it; where it has been preceded by depression of spirits and despondency; where, in short, there had been a marked change in the conduct and character of the individual, we may safely attribute the rash act to insanity, though there may not have been any positive evidence of deranged intellect previous to the act. In England, suicide is considered as felony, and an attempt, if it fail, is punished by the courts, unless there is decided evidence of insanity; but it is said the evidence of insanity must be stronger than in cases of homicide. In this country, the legal bearing is principally in cases of life-insurance. In the policy of all insurance companies, there is a provision that the insurance is forfeited in case of self-destruction; but the courts have repeatedly decided that suicide by a person who is insane, is not self-destruction in the view of the law.

(5.) *Homicidal Mania.*—Of all the forms of partial moral mania, that of homicidal mania has elicited most discussion, and may be considered most important. Formerly rejected by the courts in a plea of insanity, advocated by many of the most distinguished writers, it has found its way into the courts, but has again been drawn in question by Bucknell, Wharton, Winslow, Mayo, and others. That insanity at times firsts manifests itself in this form cannot be doubted; but the writers mentioned contend that it must have previously existed, and that there should be some evidence of it in the conduct of the individual. In short, that disease of the brain could not take place so suddenly, as at once to destroy the power of self-

control, and consequently the responsibility of the individual. If we remember the sudden effect produced by some medicinal agents, as nitrous oxide, chloroform, sulphuric ether, and the loss of consciousness which they produce, we can well imagine that a sudden congestion of the brain, from whatever cause, might produce a temporary insanity. At the same time, it is no doubt true that, in a large majority of the cases of what have been considered impulsive insanity, it is only the sudden outburst of a disease which the patient had previously been able to conceal; and, if his conduct is carefully examined, it will be found that his character was changed, and that he gave decided evidence of insanity, previous to the criminal act.

## TESTS OF INSANITY.

In cases of unsound mind from defective development, or diminished activity of the organs, there is not usually much difficulty in determining its existence. The only question likely to arise would be the extent of the disqualification for civil contracts, or of responsibility for criminal acts. The previous history of the individual; the education he had received; whether he had been in the habit of transacting business; and the general estimate of society, together with the capacity of receiving instruction, should all be taken into the account. It is not often that either imbecility or dementia is feigned, as the previous history of the individual would expose them. The various tests which have at different times been adopted to determine the capacity of imbeciles and persons demented, as the ability to count, to read or write, or remembering the past events of their lives, are all fallacious; and the medical witness, as well as the jury, is compelled to form his opinion from the whole history of the case.

*Character of Insanity from Undue Excitement of the Faculties; Mania.*—1. The maniac differs from the sane, not from a loss or defect of any of the faculties, as in idiocy and imbecility, but in excessive action in some, and in exercising them differently. To judge of the existence of mania, it is necessary to know how a man acts under ordinary circumstances. Men differ so widely from each other, that no particular standard can be adopted. It is not mere eccentricity that constitutes insanity, or that a man feels, thinks, and acts different from any other man. It must be remembered

that insanity consists in a change of character produced by disease. The standard, then, by which a man is to be judged is his former self. Thus, the same acts committed by two different individuals, might in one case be an evidence of insanity, and in the other not. This, it appears to me, was the error of the distinguished medical men who testified in the case of Huntington. They could not conceive that a sane man could be guilty of the acts of folly and crime of which he stood convicted. If his previous life had been distinguished for moral honesty, for care and prudence, his acts would indeed have been an evidence of insanity. All persons are aware how readily a person who has once entered on a career of crime descends from one step to another, until, crimes from which they would formerly have shrunk with horror, become familiar to their minds; but the transition is gradual and not so sudden as in insanity. In most cases it is connected with some delusion, believing in the existence of persons, things, or circumstances which have no existence in fact.

2. The senses are often changed, sometimes preternaturally exalted. The senses of smell, of hearing, or of taste, is preternaturally acute, sometimes perverted, at other times blunted or destroyed. Natural objects often appear changed, so as not to be recognized; the insane often see objects which have no existence; hear sounds and conversations, often delicious music, which have no existence except in their perverted imagination. Persons with whom the insane associate often become in their diseased imagination clothed with supernatural properties. Real impressions, as in dreams, often form the material for imaginary scenes.

3. The insane antics of madmen are usually the result of their delusion. On one occasion, an insane patient being told that, unless he was quiet, it would be necessary to confine him, he ridiculed the idea, saying he could break any ropes or bands we could place on him, but when seized, and finding resistance was in vain, he at once said if we would relieve him he would be quiet, as he saw the Almighty had given us power to control him.

4. The acts of the madman which are the results of his delusion are often such as no sane man would deem proper to accomplish the object in view.

5. The violence of the insane is often the effect of his delusion and not of mere passion.

6. Insane patients of a reserved disposition, unless impelled by some powerful motive, have often the power of concealing their

delusion. Pinel relates a case where a commission was appointed to visit the asylum and return such persons as were not insane. They examined one patient repeatedly, and on successive days, without being able to discover any evidence of insanity; they at last ordered the papers to be made out for his liberation. It was necessary, before being relieved, that he should himself sign the certificate. On the paper being placed before him he signed himself "Jesus Christ."

7. The acts of an insane man often evince the same forethought and preparation as those of the sane.

8. The insane, notwithstanding their proverbial cunning, are easily imposed upon. A gentleman who was conveying an insane patient to the asylum at Hartford, was abruptly addressed by his patient's saying: "I suppose I am your prisoner." He was asked why he thought so. He answered: "Because I see you carry a cane." "Very well," said he, "you take the cane and then I will be your prisoner," with this he was perfectly content.

9. Insane patients are often conscious of their condition, and understand the legal relations in which they are placed.

## THE PLEA OF INSANITY IN CRIMINAL CASES.

From what has been said, it will appear evident that no single test or standard can be adopted to determine the extent of criminality and of responsibility in cases of insanity. All modern writers agree that the former test adopted by the courts of a knowledge of right and wrong is utterly fallacious. We have seen that Judge Beardsley applied it to the particular act, and directed that the prisoner should have sufficient intelligence to understand the object and nature of a trial, and take the necessary measures for his defence. Notwithstanding a knowledge of right and wrong was laid down by the fifteen judges as the test, McNaughton was—about the same time—acquitted on the ground of insanity, in entire violence of this doctrine. The rule laid down by Lord Erskine is only applicable to a particular class of cases. It must, therefore, be evident that there is no particular standard by which the criminality of an act is to be judged. We must take into consideration all the attendant circumstances, the previous history of the individual, his character and conduct—the causes which may have incited him to the criminal act—the manner of its execution,

and the subsequent conduct of the individual. It is not mere eccentricities of character and conduct that constitute evidences of insanity; it is not that a man differs in opinion from his neighbors or from other people. We often meet with such men; they are said to be eccentric, but no one considers them insane, and in no court of justice would their eccentricities be received as an excuse for crime; but it is that the individual differs from his former self. The careful, prudent, and cautious man of a sudden becomes a careless, visionary speculator; his property is squandered and wasted—the fond and affectionate parent becomes tyrannical and morose—and these changes are without any known adequate cause. If we find that an individual whose previous character had been without reproach becomes suddenly altered and he commits a crime which was foreign to his previous character, and if at the same time it is certain that there could be no motive which could actuate a sane man, we would almost instinctively say he must be insane, and in this opinion we would probably be right, whatever might be the decision of a jury. A sane man never acts without a motive which in his view is a sufficient excuse, however unreasonable and unsatisfactory it may seem to others. The madman often acts without motive from an irresistible impulse which he is unable to restrain; or, if he assigns a reason or motive, it is so absurd and inconsistent as to show his insanity. Thus, a mother will kill her child, whom she tenderly loves, because she has been commanded by the Almighty. The entire absence of all rational motive, though perhaps not of itself sufficient to prove insanity, would be a strong evidence in its favor.

The manner in which an act is executed may tend to designate its character. Maniacs are frequently excited by the sight of murderous weapons. The act is often committed, as it were, instantaneously, and on the spur of the moment, without provocation, or any known cause of excitement. Dr. Brigham considered the rapidity with which an act was committed as sometimes an evidence of insanity. Certainly they sometimes act with a celerity which would astonish a sane man.

A murderer sheds no more blood than is necessary for the accomplishment of his object; a madman often kills indiscriminately all who come within his reach. An insane man rarely has an accomplice; a murderer often.

The murderer either premeditates the act, or commits it under the excitement of strong provocation, and, if detected, either denies

or professes his penitence, or sues for pardon, or exults in the act as one of justifiable vengeance. The maniac often plots the accomplishment of his object, and conceals his intentions, but rarely troubles himself about concealment when the act is accomplished. Sometimes, however, and where the evidence of insanity is most marked, great ingenuity is manifested in concealing the crime. An experienced observer, and one familiar with the insane, is often able to determine from the looks of a patient, not only that he is insane, but the character of the insanity. I once saw the late Dr. Brigham, when on the witness's stand—after observing that he could usually tell an insane person from his looks—point to an individual in the back part of a crowded court room, saying, "There is a crazy man," on which the individual sprung up saying, "If he means me, I can prove by a dozen witnesses that I am not crazy." It must be confessed that cases occasionally occur where it is difficult determining the existence or non-existence of insanity; but it is believed that cases are very rare where a person who, from experience and observation is qualified to judge, cannot come to a satisfactory conclusion. Unfortunately, most medical men have paid but little attention to the subject. Patients seldom remain long under their care, being usually removed to an asylum; consequently, little opportunity is afforded of studying its peculiarities.

## CASES IN WHICH THE QUESTION OF INSANITY BECOMES A SUBJECT OF INQUIRY IN THE COURTS OF THE UNITED STATES.

I. The right and power of confinement, and personal liberty of the insane.

II. Capacity to perform particular acts, as the disposal of property by will; the making and the execution of particular contracts, where the question is brought into court by contesting the validity of the particular act.

III. General business capacity, in which case the question arises by petition to the court or chancellor for a decree pronouncing the party to be incapable, from lunacy or habitual drunkenness, of managing his property and transferring it to the care of a committee.

IV. Responsibility for crime.

In these several cases, the evidence of insanity, and the amount

of evidence required, would be different. The evidence might be sufficient to invalidate a particular contract, where there was suspicion of fraud or improper influence used, though it might not be proper to deprive the individual of the general management of his property. Again, it might be proper to take measures to prevent a man from wasting or squandering his property, when it would be very unjust to confine him in an asylum. Although it might be proper to deprive a man of the control of his property, and even to restrain his personal liberty, it does not necessarily follow that his insanity is of such a character as to destroy his responsibility for crime.

### I. WHAT KIND AND DEGREE OF INSANITY SHOULD DEPRIVE A PERSON OF HIS LIBERTY.

In all civilized countries, making any claim to freedom, the liberty of the subject is secured by constitutional provisions, and the statute-books abound with provisions to enforce and protect this most sacred of rights. Neither life nor property is guarded with the same care, because personal liberty lies at the very foundation of every free government. It is not a little remarkable that, both in England and in this country, the bearing and effect of insanity on this important privilege have not been clearly defined and established by law. Strange as it may seem, in not a single State, so far as I have been able to learn, is there any statute law pointing out the circumstances under which a person may be deprived of his liberty on the plea of insanity; and if we resort to the common law, and examine the decisions under it, we only find a series of conflicting decisions. Most of our lunatic asylums have been established under the auspices of the States, and many of them have some regulations for the admission of patients; but there are no *statute laws* regulating their admission. In the State of New York, and probably in many of the other States, there are provisions that, if complaint is made to a justice of the peace, or a judicial officer, that a certain individual is insane, and unsafe to be permitted to go at large, he may, on the certificate of two physicians, order his confinement. If a person who is a pauper, or supported at the public charge, becomes insane, the overseers of the poor, or poor-master, may place him in the asylum on the certificate of two physicians; but, in a large proportion of cases, patients

are taken to an asylum by their friends or connections, without any preliminary trial or evidence. It is true that a person unjustly confined may sometimes recover his liberty by a writ of *habeas corpus*, and may seek redress for false imprisonment by a suit at law; but surely it would be much better for the patient and his friends, as well as a protection to those who assisted in conveying him to an asylum, that there should be some fixed legal regulation. No one individual should have the absolute control over the liberty of another, and certainly a person, for a friendly and benevolent act to a neighbor, should not expose himself to be persecuted with law-suits, and perhaps mulcted in heavy damages. Any regulations that might be adopted, should be modified by the varying circumstances of the case. In ordinary cases of diseases, where a person is suddenly stricken down, he becomes dependent on the care and attention of his kindred and friends. To minister to the suffering and wants of those we love, is considered a pleasure instead of a burden, and at first view it would seem that it could make no material difference whether it was the brain or some other organ which was diseased; and, in most cases, all that would be necessary would be a legal provision sanctioning the seclusion or confinement of an insane person by his friends or next of kin. A few years since, Chief Justice Shaw, of Massachusetts, laid down the broad principle that the friends of an insane person are authorized in confining him in a hospital by "the great law of humanity."[1] On the other hand, the Lord Chief Baron of the English Court of Exchequer remarked that insane persons could not be legally held in confinement, unless dangerous to themselves or to others.[2]

In an able article on this subject by Dr. Ray, read at a meeting of the Association of Medical Superintendents of American Institutions for the Insane, June, 1850, he recommends that a law should be passed authorizing the friends to confine a person, in all cases where there was no doubt of the insanity, thus securing the important considerations of dispatch, privacy, and those rights which naturally flow from the domestic relations, and that, in cases of doubt, a commission should be appointed similar to that for depriving a person of the control of his property, and that the individual should be brought in person before them. It is a common observation that the chance of recovery is very much increased by an

[1] Law Reporter, Book viii. p. 277.

[2] Nottidge *v.* Ripley, Law Reporter, N. S., vol. ii. p. 277.

early removal to an asylum; and it is well known that many of the cases of suicide, now becoming so frequent, are owing to the incipient development of insanity. As early a removal as possible to a well-conducted asylum is, therefore, the dictate of humanity and prudence. The precise amount of insanity, to justify such removal, must be judged of by the friends and relatives.

## II. WHAT DEGREE OF INSANITY INVALIDATES A CONTRACT OR WILL.

1. In regard to *idiots* and *lunatics*, in the ordinary acceptation of the term, there can be no question. Whatever acts they may perform are by law considered invalid, and all control over their property is taken from them. It is in the minor forms of insanity, as in imbecility, partial insanity, lucid intervals, and intoxication, that the question arises as to the validity of contracts. The general principle seems to be that of the individual possessing sufficient capacity to attend to the ordinary duties of life; if the contract itself is not tainted with the appearance of fraud, and no undue influence can be shown to have been used, it should be considered valid. On the other hand, if the persons had not been considered competent to manage their affairs, had been under the charge of guardians, or that fraud or improper influences had been used, the contract would be considered invalid. In cases of wills, the courts have been governed more by the character of the instrument, and the apparent sanity at the time of making the will, than on any evidence of insanity previous to or subsequent to the making of the will. In a case of contested will, where the writer was called as a witness, it was clearly proved that the individual had been insane; that he had attempted to commit suicide previous to the making of the will, and succeeded in hanging himself subsequently. It was admitted that the will was a judicious disposition of his property, and the gentleman who drew the will and witnessed it testified that at the time there was no evidence of insanity. The will was sustained. In the celebrated case of Lord Portsmouth, the judge before whom the case was tried, not only came to the conclusion that Lord Portsmouth was of unsound mind, and his marriage consequently invalid, but the broad position was taken by him that weakness alone, when circumvented by fraud, would be sufficient to invalidate so solemn a contract as marriage. While, on the one hand, the courts will not lend their aid to execute or carry into effect a contract,

entered into by an incompetent person, unless, perhaps, for necessaries, where the fact of incapacity was known to the creditor; yet such is not the law when the incapacity was unknown, and no advantage had been taken, and particularly if the contract had been in part executed.

2. *Partial Insanity.*—Without at present entering into a consideration of the question of the possibility of partial insanity, it is sufficient to state that, although there have been some decisions which may be considered exceptions, yet the general rule seems established that partial insanity does not invalidate a contract, unless it involves the particular subject of delusion.

The same principle applies to the making of a will. The mere existence of eccentricity, or even the existence of delusion, if the individual at the time of making the will had ordinary business capacity, does not impair its validity, unless it appear that such delusion has influenced the person in making the will, as if such a person have an unreasonable prejudice against a person or persons, who are the natural and legal heirs, and for the purpose of depriving them of their natural rights, makes a different disposition of his property.

3. *Lucid Intervals.*—A person who is proved to be, or to have been, actually insane at the time of making a contract, or making a will, of course has no power of making a valid disposition of his property. It may, however, be contended that, although a person may be proved to have been previously insane, or to be insane at the present time, yet at the time of making the contract he had a lucid interval, in such case the burden of proof lies with those who would maintain the validity of the contract. The proof of previous insanity is considered *prima facie* evidence of insanity. If, however, it can be clearly shown that there was an actual restoration of reason at the time, it is considered valid. The older law writers dwelt at considerable length on the subject of lucid intervals as of frequent occurrence; but writers on insanity who have had most opportunity of judging, are rather skeptical on the subject, and whilst they admit that insane patients are at times more or less violent, they contend that they can never be considered as rational and responsible agents, unless there is a complete recovery and restoration to reason. It is not then sufficient to prove a mere subsidence of excitement, but a complete recovery. A somewhat different doctrine, however, has been applied to idiots, as it is justly supposed that the disease does not vary. If they are proved to

have transacted business in a rational manner, it is deemed a proof of business capacity. When no extraneous influence is shown to have been used, the character of the act itself goes far to determine the capacity of the party at the time.

4. *Intoxication.*—It is generally admitted that intoxication disqualifies a man from making a valid contract or will. It is, however, on the principle that there is fraud, either open or implied, as it is contended that no person would make a contract with a drunken man, unless he had some sinister design. It has even been considered a valid defence, as against an innocent party, as in case of an indorsement of a note; but, if a man is capable of writing his name legibly, it is doubtful whether a jury would excuse him on the ground of incapacity. A man is not, however, permitted to take advantage of his own acts under this plea, as where a man has purchased goods, and appropriated them to his own use, and then sets up the plea of incompetence as a defence. In actions for personal injury to the person or property of another, the existence of intoxication is no defence; but, in a case of accident from negligence or oversight, the existence of intoxication may be proved. Thus, in a suit for damages for running a sleigh against the plaintiff, Justice Gibson said the evidence of intoxication ought to have been received, not because a drunken man's acts are different from a sober man's acts, but because, where the evidence of negligence is nearly balanced, the fact of drunkenness might turn the scale, inasmuch as a man partially bereft of his faculties would be less observant than if he was sober, and less regardful of the safety of others. For this purpose, but certainly not to influence the damages, the evidence ought to have been admitted.

Drunkenness to such an extent as to render a man unconscious of what he is doing, or even in a slight degree, when it renders him more subservient to the influence of others, is sufficient to invalidate a will; but the proof of habitual drunkenness, unless it appears that he was under the influence of liquor at the time, or that it has impaired his faculties to such an extent as to disqualify him for the transaction of ordinary business, will not destroy its validity.

### III. WHAT IS NECESSARY TO BE PROVED TO DEPRIVE A MAN OF HIS ESTATE, OR THE MANAGEMENT OF HIS PROPERTY.

In England, and most if not all of the States in this country, provision is made by law for the protection of the property of such persons as, from unsoundness of mind or from habitual drunkenness, are incapable of managing it themselves. When any person is suspected of such disability from either of the above causes, any person having an interest in the estate may make application to the proper judicial officer. On such application being received, the judge appoints a commission to examine into the facts of the case; such commission summons a jury, who, after hearing the testimony on the respective sides, and the charge of the commissioner as to the law, return their verdict whether the respondent is, from lunacy or habitual drunkenness, incapable of managing his estate. If the verdict is in the affirmative, the judge then appoints a committee to take charge of the estate. The respondent, however, has the right to traverse the finding—*i. e.*, to put in a formal denial of it, in which case the question is determined before a court and jury in the same manner as any other contested fact.

In an examination of this character, the witness is not to confine his examination to the validity of any single act, but the general capacity for managing his affairs. There are many cases on record of persons who have managed their affairs with great shrewdness and success, and yet on some subjects have been clearly insane. On the other hand, no matter how much shrewdness he may manifest at times, if he is reckless and improvident in the general management of his affairs, it may be necessary to take from him the control and management of his property. The first question is, has the respondent sufficient mental capacity? If it is decided that he has, the next question is: Are his capacity and judgment so perverted by insanity or habitual intemperance, as to deprive him of the power of control over his actions?

In regard to habitual drunkenness, it is evident that occasional intoxication does not render a man an habitual drunkard. Neither, on the other hand, does it require that a man should be constantly drunk. Justice Knox, after stating the difficulties of the case, and that it was one for the jury to decide, adds: "The court has no hesi-

tation in saying, that the man who is intoxicated, or drunk the one half of his time, should be pronounced an habitual drunkard."

## IV. WHAT DEGREE OF INSANITY AVOIDS RESPONSIBILITY FOR CRIME.

Much of the difficulty and confusion on this subject, it is believed, has arisen from the attempt on the part of the courts to establish a general arbitrary rule for all the different forms of insanity. Thus, we are told by the courts, both in England and the United States, that the true test is a knowledge of right and wrong. Some state that it is not a general knowledge of right and wrong, but a knowledge as regards the particular act. Lord Erskine, having a case in which this doctrine would not apply, insisted that the existence of delusion was the true test; whilst some recent charges have instructed the jury that, "if they believed the prisoner was impelled by an irresistible impulse which he could not control, he should be acquitted." Let us examine these several tests separately, and see whether it is not possible to reconcile the different positions taken by the courts.

1. When the defendant is incapable of distinguishing between right and wrong in general terms. Though this was formerly the doctrine held by the courts, and is still occasionally propounded to the jury, it is so contrary to reason and humanity as to be generally abandoned. Certainly nine-tenths of the patients confined in our asylum can distinguish between right and wrong in the abstract. On one occasion, the late Dr. Brigham questioned one of the craziest patients in the asylum, and asked him if it was right for one man to kill another. The reply was: "It would not be right for you, or any one else; but it would be right for me; for I am *God Almighty*, and have a right to do what I please."

2. When the defendant is incapable of distinguishing between right and wrong in reference to the particular act. In cases of idiocy, imbecility, and some cases of general mania, the question whether the prisoner had sufficient capacity to appreciate the nature of the crime and its consequences, is the true question to be put to the jury. The rule laid down by Judge Beardsley, in the case of Wm. Freeman, is perhaps the just one. In order to be tried, the prisoner should have sufficient capacity to understand his situation, and to employ counsel, and direct as to his defence. The witness,

in judging of the capacity of the prisoner, must judge not merely from his present appearance, but also his antecedents, his previous history, the injuries he may have received, his education, and the question whether his parents or family have been insane. In the answer of the fifteen judges in England, they say: "The jury ought to be told in all cases, that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes until the contrary be proved to their satisfaction. And to establish a defence on the ground of insanity, it must be clearly proved that, at the time of committing the act, the party accused was laboring under such a defect of reason from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know that he was doing what was wrong."

3. When the defendant is laboring under an insane delusion. In the trial of Hadfield, in 1800, Lord Erskine took the position and maintained it with all the force of his eloquence, that delusion is the true test of insanity, thus repudiating the test of knowledge of right and wrong. After showing that the test, as laid down by the attorney general, only applies to idiots and persons laboring under delirium, he says: "Delusion, therefore, where there is no frenzy or raving madness, is the true character of insanity; and where it cannot be predicated of a man standing for life or death for a crime, he ought not in my opinion to be acquitted. I must convince you, not only that the unhappy prisoner was a lunatic within my definition of lunacy, but that the act in question was the *immediate unqualified offspring of the disease.*"

The question propounded to the fifteen judges was: "If a person under an insane delusion as to existing facts, commits an offence in consequence thereof, is he thereby excused?" They say: "The answer must depend upon the nature of the delusion; but making the same assumption as we did before, viz., that he labors under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility, as if the facts which he supposes to exist were real. For example, if under the influence of his delusion, he supposed another man to be in the act of attempting to take away his life, and he kills that man as he supposes in self-defence, he would be exempt from punishment. If the delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to

punishment." The mere existence of delusion is not therefore sufficient to exempt from responsibility.

There are many persons in the community laboring under delusion without impairing their usefulness. But a few years since, there were many persons who firmly believed the world was coming to an end at a particular time, and many good citizens at the present time believe they can converse with their departed friends through the agency of spiritual mediums. Though these are no doubt delusions, they would not properly be termed insane delusion. Insanity we believe to be caused by disease or disordered functions of the brain. To constitute an insane delusion, it must arise from such cause, of which there will be some evidence aside from the delusion itself.[1] To excuse for the commission of crime, the delusion must not only be insane, but the crime must be the "*immediate* unqualified offspring of the disease."[2] Thus, a man may believe he can control the motion of the heavenly bodies, or that he is Governor of the State, or President of the United States. And yet, if he was to commit a homicide from motives of revenge or to appropriate the property of another to his own use, he would be held responsible. If, on the contrary, he believed that the act was necessary to save his own life, or, as has frequently been the case, he firmly believes he was commanded by a higher power to commit the act, and that it was his duty to obey, though fully aware of the consequences, he must be considered irresponsible. Some years since, a man was tried for the murder of his two children. He was proved to have been steady, industrious, and tenderly attached to his family, and the only reason he could give was that he had been commanded from heaven to destroy them, and thus save them from the suffering and misery of this life. Several letters which the writer saw written to his wife whilst in prison breathe forth the most ardent attachment to her and the children. He was tried for

[1] The term delusion, as used in a medico-legal sense, is somewhat different from the general acceptation of the term. Bucknell thus defines it: "A delusion is a belief in the existence of things which have no existence in reality, or an erroneous perception of the nature of things, or of their relation to each other occasioned by cerebro-mental disease.

[2] Dr. Bucknell dissents from this generally received doctrine, and contends that as an insane delusion proves the existence of diseased action of the brain, and consequently the existence of insanity, the person should be exempt from punishment, though there did not appear any necessary connection between the delusion and the particular criminal act.

murder, convicted, and sentenced to execution. The letters written after the sentence breathe no complaints, no fears; he spoke freely in them of the time appointed for his execution, as the time when he would join his children, who had gone before him to heaven. Through the interference of some kind friends, his punishment was commuted to imprisonment for life.

4. Where the defendant is impelled by a morbid and uncontrollable impulse. Few cases have arisen more difficult of adjudication than those under consideration. Whilst no doubt can exist that cases of this character occur, and that where it really exists, the individual should not be held responsible, yet the maxim requires to be guarded with extreme care, to prevent abuse. In the trial of Rogers, for killing the warden in the Massachusetts State Prison, in 1844, Chief Justice Shaw says: "Are the facts of such a character, taken in connection with the opinion of professional witnesses, as to induce the jury to believe that the accused was laboring for days under monomania, attended with delusion, and did they indicate such a state of diseased mind, that the act of killing the warden was to be considered an outbreak or paroxysm of disease, which, for the time being, overwhelmed and superseded reason and judgment, so that the diseased was not an accountable agent? If such was the case, the accused is entitled to an acquittal." Chief Justice Gibson, in a case tried in Pennsylvania, in 1846, in his charge to the jury, after speaking of the test of right and wrong, adds: "But there is a moral or homicidal insanity consisting of an irresistible inclination to kill, or to commit some other particular offence. There may be some insane ligament pressing on the mind, drawing it to a consequence which it cannot avoid, and placing it under a coercion which, while its results are clearly perceived, is incapable of resistance. The doctrine which acknowledges this mania is dangerous in its relations, and can be recognized only in the clearest cases."

Numerous cases are on record where mothers under the influence of such impulse, have killed their children, and of others who have begged to be confined, or to have their children removed from their presence. A case is related of a gentleman who had been suffering from ill health, who on one occasion ordered his whole family to quit the room, and subsequently locked himself in his own room. His physician found him in a state of great excitement, when he informed him that it was with the utmost difficulty that he restrained himself; had his family not quitted the room he

certainly would have killed them; and that he had locked himself in to prevent doing them an injury. Not long since, the writer was consulted by a gentleman, who, as he learned from the friend, had been melancholy and low spirited, which rendered his friends somewhat anxious. When on one occasion he seized an axe and split open the head of a favorite dog, no provocation had been given, and on questioning him, he seemed unable to give any reason or explanation whatever. A very intelligent gentleman, a friend of the writer, mentioned a few days since a circumstance which occurred to him some years since, and which seems to throw some light on the subject of impulsive insanity. At the time when it was fashionable to exhibit the effects of nitrous oxide, and of sulphuric ether by breathing it, among others he breathed the ether; being of a very excitable temperament, he was very much affected, and for the time entirely lost his consciousness. For some time afterwards, whenever much excited, he felt precisely the same symptoms as when he took the ether, until he became alarmed for the result. On one occasion, he struck his room-mate a severe blow in the face; on another, threw a billet of wood at a fellow student, which might have been attended with serious consequences —acts which nothing would have induced him to do in his right mind, and of which he had no knowledge or recollection when the paroxysm was over. Whilst therefore, it would be unwise to reject the doctrine of impulsive insanity, some collateral evidence, such as previous or subsequent ill health, its contradiction with the former character and conduct of the prisoner, the absence of all rational motive, or the hereditary predisposition; should be required.

Pinel was the first to advance the idea of impulsive insanity. He says: "There are madmen in whom there is no perceptible aberration of the intellectual processes; of the perception, judgment, or memory, and yet a perversion in the manifestations of the will in a blind impulse to the commission of violence and blood-thirsty rage, without any assignable dominant idea, or any delusion of the imagination which could cause such a propensity." Although the doctrine of impulsive insanity has been sustained by many able writers, and, as we have seen, been sometimes admitted by the courts, there are not wanting recent writers, who reject the whole doctrine of moral insanity under which this particular form is placed. Among these, are Heinrich, Lenbuscher, Winslow, Mayo, Bucknell and Wharton. Dr. Bucknell says: "The existence of

the third class in which the impulse is sudden and unreflected on, admits of grave doubt." "The testimony in favor of the existence of such a variety is very scanty and unsatisfactory; and it is improbable that cerebro-mental disease can develop itself in so sudden a manner. It is probable that the cases of insanity which have been placed under this head were less recent and sudden than they were supposed to be. The earlier stages of diseased feeling had been unobserved by others, and unacknowledged by the patient."[1]

When we come to examine the opinion expressed by Dr. B., it will not be found so adverse to the received opinion as we might at first suppose. That such cases are of frequent occurrence, the testimony is ample. Dr. B. thinks it one of the forms of development of pre-existing disease. No writers, so far as our knowledge extends, have ever supposed that the disease of which the homicidal paroxysm was but the expression, occurred so suddenly, but that the patient had the art or power to conceal it, until it suddenly burst forth.

## V. HOW INTOXICATION AFFECTS RESPONSIBILITY FOR CRIME.

1. Insanity, when produced by intemperance, assuming the form of delirium tremens, affects the responsibility in the same way as insanity produced by any other cause. Although a contrary doctrine has some time been held, and persons have been punished for crimes committed whilst under a paroxysm of delirium tremens, yet the weight of authority would place them on the same footing as persons insane from any other cause. As far as concerns temporary incapacity, delirium tremens acts in the same way as any other form of delirium, and when complete, destroys the moral as well as the intellectual responsibility. The argument that, because it arose from voluntary intemperance, has no force, as a large proportion of the cases of insanity from other causes arise from vices or follies voluntarily committed.

2. Insanity immediately produced by intoxication, does not destroy responsibility, when the patient made himself voluntarily intoxicated. Drunkenness, unless it be extreme, does not entirely

[1] Dr. B. objects to the term impulsive insanity, and would substitute the term insanity, without delusion.

destroy the moral or intellectual powers, and although there are some persons who seem entirely bereft of reason, and become furiously mad, yet, knowing as they do the effect which liquor produces on them, if they voluntarily place themselves in the condition, justice and a due protection of the community require that they should be held responsible. There is one circumstance which might appeal strongly to the sympathy of a jury, though it is doubtful whether it should qualify the above rule, viz., when a person, from previous injury to the brain, or from disease or peculiarity of the constitution, is rendered deranged by a quantity of liquor which would not affect a person differently constituted. When the question of *malice prepense* is agitated, the intoxication of the party may be shown. Thus, a man committed homicide by killing his wife, under circumstances where the act itself might be considered evidence of *malice prepense*, had it not been made to appear that both husband and wife were drunk at the time.

Summary.—From the above, the following propositions may be considered as established by various judicial decisions, in this country, where the plea of insanity is set up in defence in criminal prosecution.

1. Was the prisoner—at the time of committing the act—capable of distinguishing between right and wrong, in regard to the particular act? *i. e.*, was he capable of appreciating the criminality of the act, and the consequences which would result, and the penalty for its commission? If so, he is considered responsible. Or,

2. Was the prisoner, at the time of committing the act, laboring under an insane delusion? The mere fact that the prisoner was laboring under a delusion is not considered a justification, unless there is a direct connection between the delusion and the criminal act. Or,

3. Was the prisoner impelled to the commission of the act by an insane impulse which he could not control? By an insane impulse is not meant a mere burst of rage or passion, or excitement which he may not control, but an impulse resulting from cerebromental disease; consequently, it is necessary to show some other evidence of disease than the act itself, as a change in his character; its incompatibility with his former character and conduct; the absence of all motive, or of motives which could influence a sane man; the existence of insanity in his family, or a hereditary pre-

disposition; a previous injury, or ill-health, showing evidence of disease. In the absence of such collateral evidence the prisoner would usually be held responsible.[1]

The question to the jury should be simply, Is he proved to be insane: not whether he can distinguish between right and wrong, or any other particular test. The divisions into intellectual and moral insanity; into general and partial, though appropriate in a scientific work on insanity, are not recognized by the courts of justice.

The law presumes every person sane until the contrary is proved. Consequently, the burden of proof rests with those claiming an exemption on the plea of insanity; but if the person has before been proved to have been insane, the presumption is that he is still so, and the prosecution must prove his recovery. In the case of the People *v.* William Spear, for arson, in burning the lunatic asylum, tried at the Oneida Circuit, in March, 1858, it appeared that some years previous the prisoner had been tried for arson in New York, and acquitted on the ground of insanity, and sent to the asylum at Utica. Judge Allen charged the jury that the prosecution must prove his recovery at the time the act was committed.

[1] It has been contended by some that by long indulgence, the passions may acquire such force and strength that they are no longer under the control of the will, or, in other words, irresistible, and that such persons should be considered insane, and consequently irresponsible, though there is no evidence of disease. It is very questionable whether, in the absence of disease, they ever acquire such force that they cannot be controlled by sufficiently powerful motives; but, admitting its truth, it would be very dangerous to admit that it renders a person irresponsible, and it would be a grave question whether the good of the community did not demand that it be placed in the same category as a man who voluntarily rendered himself insane from drunkenness. Dr. Bucknell says: "The real question is not whether the emotions occasioning the overt act are beyond the power of the individual to control, but whether they are the result of disease."

It may be said that, as we cannot know the disease of the brain, except by the symptoms, and that insanity is an evidence of diseased brain; that it is only reasoning in a circle to say we must prove disease of the brain to prove insanity; this is partly, but not strictly true. There are many evidences of disease of the brain, that are not evidences of insanity, and disease of the brain may exist without insanity. The act itself may not prove either insanity or disease, but taken in connection with other evidence of disease, may prove both disease of the brain and insanity.

## FEIGNED INSANITY.

Insanity is most frequently feigned to escape punishment for crime, or by persons already convicted and imprisoned to avoid the punishment of labor, and escape from prison. Consequently, it is seldom feigned, except where some particular object is to be gained.

*Idiocy* is seldom feigned, and when it is, is easy of detection. The previous history of the individual would usually expose the imposition. In addition, the real idiot has usually some deformity of the head, which accounts for his condition.

*Imbecility*, though not often feigned, is more so than idiotism, and is more difficult of detection, as the distinction between this condition of the mind and that of health is not so marked as that of idiocy; still, where the previous history of the individual is known, it would not be difficult detecting the feigned disease. It is only in those cases where we are compelled to judge without this knowledge, that an intelligent physician might be deceived. A memorable case of this kind occurred in New York, in the case of Mrs. Cochran, who, for a time, succeeded in baffling Dr. McDonald, and others, until at last she was detected in listening at the key-hole of her door to overhear the consultation of physicians sent to examine her. In cases where the previous history is unknown, the peculiar expression of the countenance will aid in forming an opinion. The dull, stupid, and wandering look; the want of connection in the ideas; the pusillanimous and submissive manner, with sudden and strange gusts of passion, are difficult to assume. The history of the individual, as given by himself, may aid us in forming an opinion. In the real imbecile, stupidity and shrewdness are usually equally displayed on all subjects; but, when feigned, shrewdness will be manifested on subjects involving his own interest, or the success of his scheme, and his stupidity on those which are indifferent. All the conversation of the person feigning tends to criminate others, and exculpate himself, whilst that of the real imbecile tends to criminate himself.

*Dementia*, like the two former, is seldom feigned. In attempting it, the impostor generally indulges in pretended hallucinations and mental excitement, which is inconsistent with this form of insanity.

*Mania.*—This form of insanity is more easily assumed, and more difficult of detection than the preceding, and consequently is more frequently feigned. The distinction between the true and the feigned disease, though it may require time and close observation, is usually not very difficult. Most persons who attempt to feign mania, overact the part they assume, and thus expose themselves to detection. The peculiar haggard look; the striking wildness of the eye, of the real maniac cannot be imitated. The real maniac will often pass days, and sometimes weeks, without sleep, or if he sleeps at all, it will be disturbed and agitated; whereas, it is as difficult for a person feigning mania to avoid sleep, as it is for the real maniac to obtain it. Another character of true mania is the insensibility to the operation of medicines, particularly opiates; whereas, the feigned maniac cannot resist their operation. The true maniac is comparatively insensible to external impressions, and resists, in a remarkable degree, the influence of cold, hunger, and thirst, without complaint. A peculiar odor or emanation, given off by the body of the true maniac, is generally mentioned as a means of detection. By carefully watching a person feigning mania, it will be found impossible for him to maintain, for a long time, his pretended excitement; he will, therefore, become quiet, when he supposes he is not observed, and resume it whenever any one is present to notice it. That peculiar perversion of the moral feelings, which causes the maniac to dislike his friends, not being generally understood, is not often assumed.

*Partial Intellectual Mania.*—Few persons who have not made insanity a particular study, are sufficiently acquainted with the peculiar form under consideration, to attempt its imitation. Persons pretending partial insanity are constantly recurring to and leading to the subject of their particular delusion. Whereas the person who is really insane, seldom refers to it unless closely questioned, as if seeking to avoid it, but when questioned takes no pains to reconcile his delusions with other facts. The ungovernable fury which opposition and argument produce in most maniacs is a striking peculiarity of insanity. Many of the peculiarities mentioned as belonging to mania, such as inability to sleep, the irritability of temper, the violent prejudices and insensibility to impressions, belong equally to partial mania.

*Moral Insanity.*—As this form of insanity has never been recognized by the courts, as rendering the individual irresponsible for crime, it would not be likely to be feigned.

*Concealed Insanity.*—Though many, and perhaps most insane persons, may for a time conceal the approach of the disease, yet when fully formed, they can no longer so control their thoughts and actions as not to betray the disease. I have, however, no doubt there are many in society who indulge in strange delusions, who are on the verge of insanity, and who, could their thoughts and feelings be known, would be considered as maniacs, and yet succeed in controlling their actions, and eventually recover without their condition being ever known to any but themselves.

## TESTIMONY OF SKILLED WITNESSES IN COURTS OF JUSTICE.

The principal object of all government is the protection of life, liberty, and property; it is for this that laws are established and penalties attached to their violation, and that government may, perhaps, be considered best where these objects are most perfectly accomplished. Penalties are attached to the violations of the law for the purpose of preventing their commission, and by the force of example to prevent others from committing the same act; it is not for man to judge and inflict punishment as punishment for the transgression. The efficacy of punishment for the prevention of crime must depend in a great measure upon the certainty of detection and the infliction of the punishment. The celebrated Jeremy Bentham is said to have expressed the opinion that a mild punishment, if it was certain to be inflicted, would be more effectual in preventing crime than a much more severe punishment, that was uncertain. Perhaps, therefore, we would be justified in the assertion, that the most important officer connected with criminal jurisprudence, is the one upon whom devolves the duty of investigation and detection of crime. In this country that duty devolves mainly on the coroner, an office the faithful discharge of the duties of which demands talents of a high order, a knowledge of human nature, of the motives to criminal action, and the means resorted to by criminals to accomplish their object. It is the particular duty of the coroner to examine into and investigate the cause of death when it occurs suddenly, or under suspicious circumstances. As almost every such case of death requires a *post-mortem* examination for its elucidation, there would seem a natural propriety of having a medical officer associated with the civil authorities. In almost every country on the Continent of Europe, there are medical offi-

cers appointed by government to assist and aid the authorities in the investigation of crime. In England, the coroner is authorized to call to his aid any medical practitioner who has been in attendance, or is in actual practice, and to pay him as for professional services one guinea for testifying, and two guineas for a *post-mortem* examination. In the State of New York, the coroner is required to call to his aid a medical man, but no provision is made for his compensation; sometimes a slight remuneration is allowed by the Board of Supervisors. When a medical man is called to testify to facts within his knowledge, he is in the capacity of an ordinary witness, and is not expected to express any opinion, or draw any conclusions from the facts. If, for instance, he has made a *post-mortem* examination in a case of a wound, he should state the situation and character of the wound; what parts are injured; but not to express any opinion as to the effect of such an injury, or whether or not it was the cause of death. In most cases, however, the physician is called on to testify both as an ordinary and as a skilled witness, *i. e.*, to testify to the facts, and to express an opinion as to the deductions to be drawn from the facts. It is customary on the trial for both parties to call witnesses, simply as experts or skilled witnesses; who, after hearing the testimony as to the facts, are to give an opinion as to the deductions to be drawn from them, as in the above case; after hearing the description of the wound, he gives an opinion as to the ordinary effect of such a wound, but not whether it was the cause of death in the particular case. This is a matter which belongs to the jury. In a case of suspected insanity the witness hears the testimony, and then states to the jury what in the testimony goes to prove or disprove the supposition of insanity. It is the custom in this country for both parties to summon as many persons as skilled witnesses as they please, and the numbers depend upon the interest of the case, the difficulties involved, or the zeal and energy of the respective counsel. Any medical man may be summoned as a skilled witness.

Though the law requires that a medical man when subpœnaed should attend the court for the purpose of giving his testimony, there is no provision made for paying him for his time and services, or even defraying his necessary expenses. If a medical man has a knowledge of any facts connected with the case, it is his duty—as that of any other good citizen—to attend court and give his testimony. I am, however, unable to see on what grounds a medical man is required to attend the court, and hear the testimony, in

order to qualify himself to form an opinion, and then to testify before the court. It would be just as consistent to require legal gentlemen to attend the court, hear the testimony, and then aid the court with the benefit of their opinion. If the attendance of medical men as experts is really necessary, they should be designated by the court, and not by the respective parties, and should not only receive a reasonable compensation for their professional services, but should be protected from insult and abuse from the counsel on the respective sides.

The present system of permitting both parties to summon as many witnesses, and whom they please, is not only oppressive to the witnesses, but wastes the time of the court, prolongs the trial, and serves no useful purpose whatever. Of course neither party would call a witness to the stand without knowing something of what he will testify to, and the consequence is, that a dozen witnesses on the respective sides are arrayed against each other, and it is not unfrequent that the ingenuity of the counsel on the respective sides, is more engaged in picking flaws in the testimony of the adversary's witnesses, than in elucidating the truth or justice of the case. The jury, instead of being enlightened, is only confused by the conflicting testimony of the witnesses. The only security for the medical witness, when called as an expert—if he does not choose to testify—is not to acquire the necessary information, and when called to the stand, to say he knows nothing about it, or that he has formed no opinion. If, however, he concludes to form an opinion and testify, there are certain rules and regulations which he should adopt, not only to give force to his testimony but for his own protection.

1. He should listen attentively to the testimony, as to all the facts in the case, and avail himself of every authentic means of forming a correct opinion.

2. He should studiously guard against being biassed, either by popular clamor, or because he is called by one side rather than the other. He is to form his opinion exclusively from what appears in evidence, excluding, as far as possible, any previous prejudices, or what he may have seen in the papers, or heard from rumor.

3. The medical witness is not to take into consideration the influence which his testimony may have on the prisoner at the bar, or the case under consideration, if he is testifying as to facts. He states the facts as he understands them. If it is a matter of opin-

ion, drawn from the facts, he should state it honestly; but, if he has doubts, he should express them.

4. The expert is called to testify as to the bearing of the testimony given, and though he may have his own doubts of the truth of the testimony, yet, if it stands unimpeached, he must receive it as true. It is not proper for him to call in question the testimony of another witness; at the same time, he is not required to say he believes him, but can say that the testimony of the witness or witnesses prove so and so, leaving the jury to judge of its credibility.

5. A medical witness should not assume the province of the jury; as, for instance, to say a particular wound was the cause of death; he should only state what would be the ordinary effect of such a wound; or, in a question of insanity, that the testimony given was an evidence, or was not an evidence of insanity.

6. A medical man, in giving his evidence, may refer to authority as sustaining his opinion, but is not permitted to read from books. Such is the rule in the English courts, and generally adopted in this country. I do not know how Dr. Beck fell into the error of expressing a contrary opinion.

7. The medical witness should have his mind fully prepared, before taking the stand, as to what he can testify to, and his reasons, if they are required. He should, in his testimony, avoid, as much as possible, the use of technical or professional terms, which the jury would not be likely to understand; but if unavoidable, then their meaning should be explained to the jury. In giving his testimony, he should keep cool and collected, and not permit himself to be irritated or confused by the counsel; and should avoid introducing any expression or opinion not immediately connected with the cause before the court.

Much prejudice exists in the community against the plea of insanity in criminal cases, and medical witnesses have been unsparingly denounced, because they dared to testify to its existence in opposition to popular clamor, because, as was asserted, persons who were not insane have sometimes escaped under this plea. It is believed that in almost every case of this description, it will be found that it was the force of outside pressure sympathizing with the prisoner, and not the testimony of medical men, that secured his acquittal. It has been contended by some, that it were better that innocent men, or those who were really insane, should sometimes suffer, than that punishment should be rendered uncertain through the plea of insanity. Such persons should remember that

it is only when the certainty of punishment is coupled with justice, that it is effectual in the prevention of crime. The instinctive feeling of humanity revolts at the idea of inflicting the punishment of death on a fellow-being who is not a responsible agent, and who is already, by the infliction of Divine Providence, suffering one of the sorest afflictions to which man is liable, and thus the very object of the severity would be defeated.

If called in a case of supposed insanity, the witness should examine the general appearance of the individual, the shape of his head and body, the expression of countenance, the temperament, his movements, gait, &c.; ascertain the present and previous condition of his general health, the organs of digestion, appetite, &c.; whether he sleeps well, is quiet or restless; and how affected by cold; ascertain whether he has any hereditary predisposition; whether any other members of the family have been insane, or subject to fits or any marked eccentricities of character. If the mind appears unsound, inquire how long it has been so, whether from infancy; if not, did it supervene on any severe injury, disease, or mental shock, or long-continued mental application? Has he been subject to epileptic fits? Has he indulged in the use of intoxicating liquor, or in any solitary vice? Has he been subject to involuntary seminal discharges? Does the state of his mind or his feelings, taste, or habits, differ materially from what it was when he was reported sane? If the object of an examination is to test his capacity, get him to give an account of himself and family, what year he was born, the occupation of himself or friends, the use of money, &c.; inquire where he had lived at different times, whom he was acquainted with. If the object is to test his sanity, and not his capacity, ascertain, if possible, if he has any delusion. If the insanity is supposed to affect his moral feeling, inquire particularly as to his motive. When under examination, the medical witness should have clear and distinct ideas of what he states, and should not permit himself to be driven from his position by sophistry of counsel. He should never attempt to explain what he himself does not understand; it is better to say he does not know, than to give the counsel an opportunity of exposing his ignorance.

It is a question not yet settled, whether it is proper to put the question to a witness, whether he considered the prisoner insane, after hearing the testimony. It is an improper question to put to a witness, though it is often done. On one occasion, an English judge censured a witness very severely for expressing an opinion,

thus assuming the prerogatives of the court and jury. A witness should not answer such a question without first referring to the court for instruction. The true duty of the witness is to state what are, or what not, the evidences of insanity which he may have seen. When called as an expert, and compelled to predicate his opinion on the testimony given, he is called upon to testify as to what has been proved. It may happen to differ very widely from his own private belief. Thus, he may doubt the testimony of a particular witness, but his testimony stands unimpeached. In a case of supposed insanity, he may feel satisfied that, could the facts be reached, the prisoner would be found to be insane; but the defence has failed to show it, and the medical witness can only say what has been proved, and not what he thinks may remain unproved.

It has been questioned whether a medical man who has not paid particular attention to the subject of insanity should be considered an expert. It has been contended by Judge Edmons, of New York, and the sentiment is advanced by Judge Hornblower, of New Jersey, that a physician who has not paid particular attention to the subject, or had an opportunity of becoming acquainted with the case, is no better qualified to judge than an observing person who is not a physician, but who is familiar with the subject. Judge Hornblower says of medical men: "If they have not been in the habit of seeing him (*i. e.* the prisoner), if they were not familiar with his habits and symptoms, at or about the time in question, their opinions in relation to a particular individual are of no more weight, and, in my judgment, of not so much weight, as those of unprofessional persons, of good sense, who have had ample opportunity for observation." It is, however, no doubt true, that professional men who have made the subject of insanity a particular study—who have had the charge of insane patients, and have had ample opportunity to study its phenomena—though they may have never seen the prisoner before the trial, and are compelled to depend on the testimony of other witnesses, are much more competent to judge of the existence of insanity than unprofessional witnesses, though of equal or superior natural capacity. The following extract from the charge of Chief Justice Shaw, in the trial of Abner Rogers, Jr., indicted for the murder of Charles Lincoln, Jr., January 30th, 1844, presents the generally received doctrine as to the testimony of skilled witnesses:—

"The opinions of professional men on questions of this descrip-

tion are competent evidence, and in many cases are entitled to great consideration and respect. The rule of law in which this proof of the opinion of witnesses who know nothing of the actual facts of the case is founded, is not peculiar to medical testimony, but is a general rule, applicable to all cases, when the question is one depending on skill and science in any particular department. In general, it is the opinion of the jury which is to govern, and this is to be founded upon the proof of the facts laid before them. But some questions lie beyond the scope of the observation and experience of men in general, but are within the observation and experience of those whose peculiar pursuits and profession have brought that class of facts frequently and habitually under their consideration. Shipmasters and seamen have peculiar means of acquiring knowledge and experience in whatever relates to seamanship and nautical skill.

"When, therefore, a question arises in a court of justice on that subject, and certain facts are proved by other witnesses, a shipmaster may be asked his opinion as to the character of such acts. The same is true in regard to any question of science, because persons conversant with such science have peculiar means, from a larger and more exact observation and long experience in such departments of science, of drawing correct inferences from certain facts, either observed by themselves, or testified to by other witnesses. A familiar instance of the application of this principle occurs very often in cases of homicide, when, upon certain facts being testified to by other witnesses, medical persons are asked whether, in their opinion, a particular wound described would be an adequate cause, or whether such wound was in their opinion the actual cause of death in the particular case. It is upon this ground that the opinions of witnesses who have long been conversant with insanity in its various forms, and who have had the care and superintendence of insane persons, are received as competent evidence, even though they have not had an opportunity to examine the particular patient, and observe the symptoms and indications of disease at the time of its supposed existence. When such opinions come from persons of great experience, and in whose correctness and sobriety of judgment just confidence can be had, they are of great weight, and deserve the respectful consideration of the jury.

"One caution in regard to this point, it is proper to add. The professional witnesses are not to judge of the credit of other wit-

nesses, or of the truth of the facts testified to by them. It is for the jury to decide whether such facts are satisfactorily proved. The question to be put to the professional witnesses is this. If the symptoms and indications testified to by other witnesses are proved, and if the jury are satisfied of the truth of them, whether in their opinion the party was insane, and what was the nature and character of that insanity; what state of mind did they indicate, and what they would expect would be the conduct of such a person in any supposed circumstances?"